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MTC 32531-HF

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When Recorded Mail To:

Highland Community Federal Credit Union3737 Shasta WayKlamath Falls, OR 97603

Send Tax Notices To:

Duane Potter4910 Weyerhauser RoadKlamath Falls, OR 97601**TRUST DEED**

THIS TRUST DEED IS DATED April 21, 1994 AMONG  
DUANE POTTER whose address is  
4910 Weyerhauser Road, Klamath Falls, OR 97601 (referred to below as "Grantor");  
Highland Community Federal Credit Union, whose address is 3737 Shasta Way, Klamath Falls, Oregon (referred to below  
sometimes as "Lender" and sometimes as "Beneficiary"); and Mountain Title Co. whose address  
is 222 South Sixth St, Klamath Falls, OR (referred to below as "Trustee").

This Trust Deed secures the Adjustable Rate Mortgage Promissory Note (the "Agreement") dated April 21, 1994.  
The term of the Agreement is 15 years, in the amount of \$35,150.00

**1. CONVEYANCE AND GRANT.**

For valuable consideration, Grantor conveys to Trustee for the benefit of Lender as Beneficiary all of Grantor's right, title, and interest in and to the following-described real property, together with all existing or subsequently erected or affixed buildings, improvements and fixtures; all easements, rights of way, and appurtenances; all water, water rights and ditch rights (including stock in utilities with ditch or irrigation rights); and all other rights, royalties, and profits relating to the real property, including without limitation all minerals, oil, gas, geothermal and similar matters, located in Klamath County, State of Oregon, (the "Real Property"):

The West 100 feet of Lots 19 and 20 in Block 24, WEST KLAMATH,  
according to the official plat thereof on file in the office of the  
County Clerk of Klamath County, Oregon

3908-013AD-04100

The Real Property or its address is commonly known as 4910 Weyerhauser Road, Klamath Falls, OR

XX There is a mobile home on the Real Property, which is covered by this Trust Deed, and which is and shall remain real property. 1977 Fleetwood MH, Serial No. 1DFL2B727040681.

Grantor presently assigns to Lender (also known as Beneficiary in this Trust Deed) all of Grantor's right, title, and interest in any improvements and to the Rents from the Property. In addition, Grantor grants Lender a Uniform Commercial Code security interest in the Rents and the Personal Property defined below.

**2. DEFINITIONS.**

The following words shall have the following meanings when used in this Trust Deed:

- a. **Beneficiary.** The word "Beneficiary" means Highland Community Federal Credit Union (Credit Union), its successors or assigns, also referred to as "Lender" in this Trust Deed.
- b. **Trust Deed.** The words "Trust Deed" means this Trust Deed among Grantor, Lender, and Trustee, and include without limitation all assignment and security interest provisions relating to the Personal Property and Rents.
- c. **Grantor.** The word "Grantor" means any and all persons and entities executing this Trust Deed.
- d. **Improvements.** The word "Improvements" means and includes without limitation all existing and future improvements, fixtures, buildings, structures, mobile homes affixed on the Real Property, facilities, additions and similar construction on the Real Property.
- e. **Indebtedness.** The word "indebtedness" means all principal and interest payable under the Agreement and any amounts advanced or expended by Lender to discharge obligations of Grantor or expenses incurred by Trustee or Lender to enforce obligations of Grantor under this Trust Deed, together with interest on such amounts as provided in this Trust Deed. This Trust Deed secures a line of credit. The term "Line of Credit" means a revolving line of credit which obligates Lender to make advances to Grantor in the maximum principal amount at any one time as set forth



above until the Agreement is terminated or suspended or if advances are made up to the maximum credit limit, and Grantor complies with the terms of the Agreement. Funds may be advanced by Credit Union, repaid by Grantor, and subsequently readvanced by Credit Union in accordance with the Agreement. Notwithstanding the amount outstanding at any particular time, this Trust Deed secures the total indebtedness under the Agreement. The unpaid balance of the line of credit under the Agreement will remain in full force and effect notwithstanding a zero outstanding balance on the line from time to time. Any principal advance under the line of credit that exceeds the amount shown above as the principal amount of the Agreement will not be secured by this Trust Deed. The term of the Agreement is thirty (30) years.

- f. **Lender.** The word "Lender" means Highland Community Federal Credit Union, its successors or assigns.
- g. **Personal Property.** The words "Personal Property" mean all equipment, fixtures, and other articles of personal property owned by Grantor, now or hereafter attached or affixed to the Real Property; together with all accessions, parts, and additions to, all replacements of, and all substitutions for, any of such property; and together with all proceeds (including without limitation all insurance proceeds and refunds all premiums) from any sale or other disposition of the Property.
- h. **Property.** The word "Property" means collectively the Real Property and the Personal Property.
- i. **Real Property.** The words "Real Property" mean the property, interests and rights described above in the "Conveyance and Grant" section.
- j. **Related Documents.** The words "Related Documents" mean and include without limitation all loan agreements, guaranties, security agreements, mortgages, deeds of trust, and all other documents, whether now or hereafter existing, executed in connection with Grantor's Indebtedness to Lender.
- k. **Rents.** The word "Rents" means all rents, revenues, income, issues, and profits from the Property financed under an Equity Loan only.

**THIS TRUST DEED, INCLUDING THE ASSIGNMENT OF RENTS AND THE SECURITY INTEREST IN THE RENTS AND PERSONAL PROPERTY, IS GIVEN TO SECURE (1) PAYMENT OF THE INDEBTEDNESS AND (2) PERFORMANCE OF ANY AND ALL OBLIGATIONS OF GRANTOR UNDER THE AGREEMENT AND THIS TRUST DEED. THIS TRUST DEED IS GIVEN AND ACCEPTED ON THE FOLLOWING TERMS:**

### 3. PAYMENT AND PERFORMANCE.

Grantor shall pay to Lender all amounts secured by this Trust Deed as they become due, and shall strictly perform all of Grantor's obligations under the Agreement and Trust Deed.

### 4. POSSESSION AND MAINTENANCE OF THE PROPERTY.

Grantor agrees that its possession and use of the Property shall be governed by the following provisions:

- a. **Possession and Use.** Unless and until Lender takes any action under paragraph 17, Grantor may (a) remain in possession and control of the Property, and (b) operate and manage the Property. The following provisions relate to the use of the Property or to other limitations on the Property.

**THIS INSTRUMENT WILL NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES.**

- b. **Duty to Maintain.** Grantor shall maintain the Property in tenantable condition and promptly perform all repairs and maintenance necessary to preserve its value.
- c. **Hazardous Substances.** Grantor represents and warrants that the Property never will be so long as this Trust Deed remains a lien on the Property, used for the generation, manufacture, storage, treatment, disposal, release or threatened release of any hazardous substances, as those terms are defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq. ("CERCLA"), the Superfund Amendments and Reauthorization Act ("SARA"), applicable state laws, or regulations adopted pursuant to any of the foregoing. Grantor authorizes Lender and its agents to enter upon the Real Property to make such inspections and test as Lender may deem appropriate to determine compliance of the Property with this paragraph. Any inspections or tests made by Lender shall be for Lender's purposes only and shall not be construed to create any responsibility or liability on the part of Lender to Grantor or to any other person. Grantor agrees to indemnify and hold Lender harmless against any and all claims and losses resulting from a breach of this paragraph of the Trust Deed. This obligation to indemnify shall survive the payment of Indebtedness and the satisfaction of this Trust Deed.
- d. **Nuisance, Waste.** Grantor shall not cause, conduct or permit any nuisance nor commit or suffer any strip or waste on or to the Property or any portion thereof. Specifically without limitation, Grantor will not remove, or grant to any other party the right to remove, any timber, minerals (including oil and gas), soil, gravel or rock products without the prior written consent of Lender.
- e. **Lender's Right to Enter.** Lender and its agents and representatives may enter upon the Real Property at all reasonable times to attend to Lender's interest and to inspect the Property for purposes of Grantor's compliance with the terms and conditions of this Trust Deed.
- f. **Compliance with Governmental Requirements.** Grantor shall promptly comply with all laws, ordinances, and regulations of all governmental authorities applicable to the use or occupancy of the Property. Grantor may contest in good faith any such law, ordinance, or regulation and withhold compliance during any proceeding, including appropriate appeals, so long as Grantor has notified Lender in writing prior to doing so and so long as Lender's interests in the Property are not jeopardized Lender may require Grantor to post adequate security reasonably satisfactory to Lender, to protect Lender's interest.
- g. **Duty to Protect.** In addition to the acts set forth above in this section, Grantor shall do all other acts that from the character and use of the Property are reasonably necessary to protect and preserve the Property.



**5. INDEMNITY.**

Grantor shall indemnify Lender and hold Lender harmless from any and all claims or liabilities arising out of or in connection with the Property or its use, provided that such claims or liabilities arise out of acts or omissions occurring subsequent to the date Grantor first holds title to the Property.

**6. DUE ON SALE—CONSENT BY LENDER.**

Grantor shall not sell, or transfer its interest in the Real Property or any interest or party thereof, without the Lender's prior written consent. A sale, assignment, or transfer means the conveyance of real property or any right, title or interest therein; whether legal or equitable; whether voluntary or involuntary; whether by outright sale, deed, installment sale contract, land contract, contract for deed, lease-option contract, or by sale, assignment, or transfer of any beneficial interest in or to any land trust holding title to the Real Property, or by any other method of conveyance of real property interest. Transfer also includes any change in ownership of more than fifty percent (50%) of the interests of Grantor. However, this option shall not be exercised by Lender if exercise is prohibited by federal law or by Oregon law.

**7. LEASES—CONSENT REQUIRED.**

For Equity Loans secured by this Trust Deed, Grantor may lease or sublet the Property. However, Grantor shall not lease or sublet the Property without Lender's prior written consent which shall not be withheld unreasonably. Lender shall have not more than ten (10) days to reject any such transaction proposed by Grantor, and the transfer shall be deemed approved unless rejected within such ten (10) day period. For lines of credit secured by this Trust Deed, Grantor may not lease or sublet the Property. Grantor represents and agrees that the Property will remain owner-occupied.

**8. TAXES AND LIENS.**

The following provisions relating to the taxes and liens on the Property are a part of this Trust Deed.

- a. **Payment.** Grantor shall pay when due before they become delinquent all taxes, special taxes, assessments, charges (including water and sewer), fines and impositions levied against or on account of the Property, and shall pay when due all claims for work done on or for services rendered or material furnished to the Property. Grantor shall maintain the Property free of all liens having priority over or equal to the interest of Lender under this Trust Deed, except for the lien of taxes and assessments current but not yet due, except as otherwise provided in this Trust Deed. If Grantor object in good faith to the validity or amount of any tax, assessment, or related lien, Grantor at its sole expense may contest the validity and amount of the tax, assessment, or lien.
- b. **Evidence of Payment.** Grantor shall upon demand furnish to Lender evidence of payment of the taxes or assessments and shall authorize the appropriate governmental official to deliver to Lender at any time a written statement of the taxes and assessments against the Property.

**9. PROPERTY DAMAGE INSURANCE.**

The following provisions relating to insuring the Property are a part of this Trust Deed.

- a. **Maintenance of Insurance.** Grantor shall procure and maintain policies of fire insurance with standard extended coverage endorsements on a replacement basis for the full insurable value covering all Improvements on the Real Property in an amount not less than the total unpaid balance on the Agreement, and with a standard mortgagee clause in favor of Lender. Policies shall be written in form, amounts, coverages and basis reasonably acceptable to Lender and issued by a company or companies reasonably acceptable to Lender. Grantor, upon request of Lender, will deliver to Lender from time to time the policies or certificates of insurance in form satisfactory to Lender, including stipulations that coverages will not be canceled or diminished without at least ten (10) days prior written notice to Lender.
- b. **Application of Proceeds.** In the event that the Improvements are damaged or destroyed by casualty, Grantor shall promptly restore the Improvements and Lender shall make the insurance proceeds available to Grantor for restoration, subject to the following conditions: (a) Lender shall have reasonably determined that the Improvements can be restored to as good or better condition as the Improvements were in immediately prior to the casualty on account of which such proceeds were paid; (b) Lender shall have determined that such net proceeds, together with any funds paid by Grantor to Lender, shall be sufficient to complete the restoration; (c) No default and no event of failure which, with passage of time or the giving of notice, would constitute a default under this Trust Deed shall have occurred; (d) At the time of such casualty, there are at least two (2) years to the maturity date of the Note; (e) Lender shall have approved the plans and specifications to be used in connection with the restoration, which approval shall not be unreasonably withheld, and shall have received written evidence, satisfactory to Lender, that such plans and specifications have been approved by all governmental and quasi-governmental authorities having jurisdiction and by all other persons or entities required to approve such plans and specifications; (f) Lender may require that the funds be disbursed by it or by a disbursement agent appointed by it in a manner similar to that utilized for the disbursement of funds under a construction loan, including without limitation, requirement of certificates of architect as to percentage of completion and the furnishing of appropriate mechanics and materialsmen's lien waivers, the furnishing of appropriate bonds and other items as reasonably required by Lender. Net proceeds in excess of the amount necessary to complete the restoration shall, at the options of Lender, be applied to the outstanding indebtedness as a prepayment thereof.
- c. **Unexpired Insurance at Sale.** Any unexpired insurance shall inure to the benefit of, and pass to, the purchaser of the Property covered by this Trust Deed at any trustee's or other sale held under the provisions of this Trust Deed, or at any foreclosure sale of such Property.
- d. **Grantor's Report on Insurance.** Upon request of Lender, however not more than once a year, Grantor shall furnish to Lender a report on each existing policy of insurance showing: (a) the name of the insurer; (b) the risks insured; (c) the amount of the policy; (d) the property insured, the then current replacement value of such property, and the manner of determining that value; and (e) the expiration date of the policy.

**10. EXPENDITURES BY LENDER.**

If Grantor fails to comply with any provision of this Trust Deed, or if any action or proceeding is commenced that would materially affect Lender's interest in the Property, Lender on Grantor's behalf may, but shall not be required to pay all such expenses including but not limited to taxes, insurance and maintenance costs, and at Lender's option, will (a) be payable on demand, or (b) be added to the principal loan balance and be payable in accordance with the Agreement.



This Trust Deed also will secure payment of these amounts. The rights provided for in this paragraph shall be in addition to any other rights or any remedies to which Lender may be entitled on account of the default. Any such action by lender shall not be construed as curing the default so as to bar Lender from any remedy that it otherwise would have had.

#### 11. WARRANTY; DEFENSE OF TITLE.

The following provisions relating to ownership of the Property are a part of this Trust Deed.

- a. **Title.** Grantor warrants that (a) Grantor holds good and marketable title of record to the Property in fee simple, free and clear of all liens and encumbrances other than those set forth in any policy of title insurance issued in favor of or in any title opinion given to, and accepted by, Lender in connection with this Trust Deed and (b) Grantor has the full right, power, and authority to execute and deliver this Trust Deed to Lender.
- b. **Defense of Title.** Subject to the exceptions in the paragraph above, if any, Grantor warrants and will forever defend the title to the Property against the lawful claims of all persons. In the event any action or proceeding is commenced that questions Grantor's title or the interest of Trustee or Lender under this Trust Deed, Grantor shall defend the action at its expense. Grantor may be the nominal party in such proceeding, but Lender shall be entitled to participate in the proceeding and to be represented in the proceeding by counsel of its own choice, and Grantor will deliver, or cause to be delivered, to Lender such instruments as may be requested by it from time to time to permit such participation.
- c. **Compliance With Laws.** Grantor warrants that use of the Property complies with all existing applicable laws, ordinances, and regulations of governmental authorities.

#### 12. CONDEMNATION.

The following provisions relating to proceedings in condemnation are a part of this Trust Deed.

- a. **Application of Net Proceeds.** If all or any part of the Property is condemned, Lender shall apply the net proceeds of the award in any reasonable manner necessary to satisfy Grantor's obligations under the Agreement of this Trust Deed. The net proceeds of the award shall mean the award after payment of all reasonable costs, expenses, and attorney fees necessarily paid or incurred by Trustee or Lender in connection with the condemnation. However, there shall be no obligation to pay Grantor's costs, expenses or attorney fees from such awards.
- b. **Proceedings.** If any proceeding in condemnation is filed, Grantor shall promptly notify Lender in writing and Grantor shall promptly take such steps as may be necessary to defend the action and obtain the award. Grantor may be the nominal party in such proceeding, but Lender shall be entitled to participate in the proceeding and to be represented in the proceeding by counsel of its own choice, and Grantor will deliver or cause to be delivered, to Lender such instruments as may be requested by it from time to time to permit such participation.

#### 13. IMPOSITION OF TAXES BY GOVERNMENTAL AUTHORITIES.

The following provisions relating to taxes are a part of this Trust Deed.

- a. **Taxes Covered.** the following shall constitute taxes to which this section applies: (a) a specific tax upon this type of Trust Deed or upon all or any part of the Indebtedness secured by this Trust Deed; (b) a specific tax on Borrower which Borrower is authorized or required to deduct from payments on the Indebtedness secured by this type of Trust Deed; (c) a tax on this type of Trust Deed chargeable against the Lender; and (d) a specific tax on all or any portion of the Indebtedness or on payments of principal and interest made by a Borrower.
- b. **Remedies.** If any tax to which this section applies is enacted subsequent to the date of this Trust Deed, Grantor shall either (a) pay the tax before it becomes delinquent, or (b) contest the tax as provided above in the Taxes and Liens section and deposits with Lender cash or a sufficient corporate surety bond or other security satisfactory to Lender.

#### 14. SECURITY AGREEMENT; FINANCING STATEMENTS.

The following provisions relating to this Trust Deed as a security agreement are a party of this Trust Deed.

- a. **Security Agreement** This instrument shall constitute a security agreement to the extent any of the Property constitutes fixtures or other personal property, and Lender shall have all of the rights of a secured party under the Uniform Commercial Code.
- b. **Security Interest.** Upon request by Lender, Grantor shall execute financing statements and take whatever other action is requested by Lender to perfect and continue Lender's security interest in the Rents and Personal Property. In addition to recording this Trust Deed in the real property records, Lender may, at any time and without further authorization from Grantor, file executed counterparts, copies or reproductions of this Trust Deed as a financing Statement. Grantor shall reimburse Lender for all expenses incurred in perfecting or continuing this security interest. Upon default, Grantor shall assemble the Personal Property in a manner and at a place reasonably convenient to Grantor and Lender and make it available to Lender within three (3) business days after receipt of written demand from Lender.
- c. **Addresses.** The mailing address of Grantor (debtor) and the mailing address of Lender (secured party) from which information concerning the security interest granted by this Trust Deed may be obtained (each as required by the Uniform Commercial Code of the state where the Property is located) are as stated on the first page of this Trust Deed.

#### 15. FURTHER ASSURANCES; ATTORNEY-IN-FACT.

The following provisions relating to further assurances are a part of this Trust Deed.

- a. **Further Assurances.** At any time, and from time to time, upon request of Lender, Grantor will make, execute and deliver, or will cause to be made, executed or delivered, to Lender or to Lender's designee, and when requested by Lender, cause to be filed, recorded, re-filed, or re-recorded, as the case may be, at such times and in such offices and places as Lender may deem appropriate, any and all such mortgages, deeds of trust, security deeds, security agreements, financing statements, continuation statements, instruments of further assurance, certificates and other documents as may, in the sole opinion of Lender, be necessary or desirable in order to effectuate, complete, perfect, continue, or preserve (a) the obligations of Grantor under the Agreement, this Trust Deed, and the Related Documents,



and (b) the liens and security interests created by this Trust Deed on the Property, whether now owned or hereafter acquired by Grantor. Unless prohibited by law or agreed to the contrary by Lender in writing, Grantor shall reimburse Lender for all costs and expenses incurred in connection with the matters referred to in this paragraph.

- b. **Attorney-in-Fact.** If Grantor fails to do any of the things referred to in the preceding paragraph, Lender may do so for and in the name of Grantor and at Grantor's expense. For such purposes, Grantor hereby irrevocably appoints Lender as Grantor's attorney-in-fact for the purpose of making, executing, delivering, filing, recording, and doing all other things as may be necessary or desirable, in Lender's sole opinion, to accomplish the matters referred to in the preceding paragraph.

#### 16. FULL PERFORMANCE.

If Grantor pays all the Indebtedness, including without limitation all future advances, when due and otherwise performs all the obligations imposed upon Grantor under this Trust Deed and the Agreement, Lender shall execute and deliver to Trustee a request for full reconveyance and shall execute and deliver to Grantor suitable statements of termination of any financing statement on file evidencing Lender's security interest in the Rents and Personal Property. Any reconveyance fee required by law shall be paid by Grantor, if permitted by applicable law.

#### 17. DEFAULT.

The following shall constitute events of default:

- a. Failure of Grantor to pay any portion of the Indebtedness when it is due.
- b. Failure of Grantor within the time required by this Deed of Trust to make any payment for taxes, insurance, or for any other payment necessary to prevent filing of or to effect discharge of any lien.
- c. Dissolution or termination of existence (if Grantor is a corporation), insolvency, business failure, appointment of a receiver for any part of the property of, assignment for the benefit of creditors by, the commencement of any proceeding under any bankruptcy or insolvency laws by or against, or the failure to obtain dismissal or deny the contents of any petition filed under any bankruptcy or insolvency laws within the time required to answer by, Grantor or any of the individuals or entities who are herein collectively referred to as "Grantor."
- d. Default of Grantor under any prior obligation or instrument securing any prior obligation, or commencement of any suit or other action to foreclose any prior lien.
- e. If the Real Property has been submitted to unit ownership pursuant to a Unit Ownership Law or any similar law, failure of Grantor to perform any of the obligations imposed on Grantor by the declaration submitting the Real Property to unit ownership, by the bylaws of the association of unit owners, or by any rules or regulations thereunder. If Grantor's interest in the Real Property is a leasehold interest and such Property has been submitted to unit ownership, any failure of Grantor to perform any of the obligations imposed on him by the lease of the Real Property from its owner, any default under such lease which might result in termination of the lease as it pertains to the Real Property, or any failure of Grantor as a member of an association of unit owners to take any reasonable action within Grantor's power to prevent a default under such lease by the association of unit owners or by any member of the association.
- f. Failure by Grantor to perform any other obligation under this Deed of Trust if:
  - (1) Lender has sent to Grantor a written notice of the failure and the failure has not been cured within 15 days of the notice, or if the default cannot be cured within 15 days, Grantor has not commenced curative action or is not diligently pursuing such curative action; or
  - (2) Grantor has been given notice of a breach of the same provision(s) of this Deed of Trust within the preceding 12 months.
- g. If the interest of Grantor in the Property is a leasehold interest, any default by Grantor under the terms of the lease, or any other Event (whether or not the fault of Grantor) that results in the termination of Grantor's leasehold rights; provided that such events shall not constitute a default hereunder if Grantor provides Lender with prior written notice reasonably satisfactory to Lender, setting forth Grantor's intent to place the Personal Property at another location, stating the location, and evidencing Grantor's right to do so.
- h. Any breach of Grantor under the terms of any other agreement between Grantor and Lender that is not remedied within any grace period provided therein, including without limitation any agreement concerning any indebtedness of Grantor to Lender, whether made now or later.

#### 18. RIGHTS AND REMEDIES ON DEFAULT.

- a. Upon the occurrence of any event of default and at any time thereafter, Trustee or Lender may exercise any one or more of the following rights and remedies, in addition to any other rights or remedies provided by law:
  - (1) Lender shall have the right at its option without notice to Grantor to declare the entire Indebtedness immediately due and payable, including any prepayment penalty which Grantor would be required to pay.
  - (2) With respect to all or any part of the Real Property, the Trustee shall have the right to foreclose by notice and sale, and Lender shall have the right to foreclose by judicial foreclosure, in either case in accordance with and to the full extent provided by applicable law.
  - (3) With respect to all or any part of the Personal Property, Lender shall have all the rights and remedies of a secured party under the Uniform Commercial Code in effect in the state in which the Lender is located.
  - (4) Lender shall have the right, without notice to Grantor, to take possession of the Property and collect the Income, including amounts past due and unpaid, and apply the net proceeds, over and above Lender's costs, against the Indebtedness. In furtherance of this right, Lender may require any tenant or other user to make payments of rent or use fees directly to Lender. If the Income is collected by Lender, then Grantor irrevocably designates Lender as Grantor's attorney in fact to endorse instruments received in payment thereof in the name of Grantor and to negotiate the same and collect the proceeds. Payments by tenants or other users to Lender in response



to Lender's demand shall satisfy the obligation for which the payments are made, whether or not any proper grounds for the demand existed. Lender may exercise its rights under this subparagraph either in person, by agent, or through a receiver.

- (5) Lender shall have the right to have a receiver appointed to take possession of any or all of the Property, with the power to protect and preserve the Property, to operate the Property preceding foreclosure or sale, and to collect the Income from the Property and apply the proceeds, over and above cost of the receivership, against the Indebtedness. The receiver may serve without bond if permitted by law. Lender's right to the appointment of a receiver shall exist whether or not the apparent value of the Property exceeds the Indebtedness by a substantial amount. Employment by Lender shall not disqualify a person from serving as a receiver.
- (6) If Grantor remains in possession of the Property after the Property is sold as provided above or Lender otherwise becomes entitled to possession of the Property upon default of Grantor, Grantor shall become a tenant at will of Lender or the purchaser of the Property and shall pay while in possession a reasonable rental for use of the Property.
- (7) If the Real Property is submitted to unit ownership, Lender or its designee may vote on any matter that may come before the members of the association of unit owners, pursuant to the power of attorney granted Lender in Section 16.b.
- (8) Trustee and Lender shall have any right or remedy provided in the Deed of Trust, or the Note.
- b. **Sale of the Property.** In exercising its rights and remedies, the Trustee or Lender shall be free to sell all or any part of the Property together or separately, in one sale or by separate sales. Lender shall be entitled to bid at any public sale on all or any portion of the Property.
- c. **Notice of Sale.** Lender shall give Grantor reasonable notice of the time and place of any public sale of the Personal Property or of the time after which any private sale or other intended disposition of the Personal Property is to be made. Reasonable notice shall mean notice given at least ten days before the time of the sale or disposition.
- d. **Waiver, Election of Remedies.** A waiver by any party of a breach of a provision of this Deed of Trust shall not constitute a waiver of or prejudice the party's rights otherwise to demand strict compliance with that provision or any other provision. Election by Lender to pursue any remedy shall not exclude pursuit of any other remedy, and an election to make expenditures or take action to perform an obligation of Grantor under this Deed of Trust after failure of Grantor to perform shall not affect Lender's right to declare a default and exercise its remedies under this Deed of Trust.

#### 19. ACTIONS UPON TERMINATION.

In the event the Agreement is terminated, Trustee or Lender, at its option, may, not earlier than thirty (30) days after Grantor has been given written notice of termination, exercise any one or more of the following rights and remedies, in addition to any other rights or remedies provided by law.

- a. **Foreclosure.** With respect to all or any part of the Real Property, the Trustee shall have the right to foreclose by notice and sale, and Lender shall have the right to foreclose by judicial foreclosure, in either case in accordance with and to the full extent provided by applicable law.
- b. **UCC Remedies.** With respect to all or any part of the Personal Property, Lender shall have all the rights and remedies of a secured party under the Uniform Commercial Code.
- c. **Collect Rents.** Lender shall have the right, without notice to Grantor, to take possession of and manage the property and collect the Rents, including amounts past due and unpaid, and apply the net proceeds, over and above Lender's costs, against the Indebtedness. In furtherance of this right, Lender may require any tenant or other user of the Property to make payments of rent or use fees directly to Lender. If the Rents are collected by Lender, then Grantor irrevocably designates Lender as Grantor's attorney in fact to endorse instruments received in payment thereof in the name of Grantor and to negotiate the same and collect the proceeds. Payments by tenants or other users to Lender in response to Lender's demand shall satisfy the obligations for which the payments are made, whether or not any proper grounds for the demand existed. Lender may exercise its rights under this subparagraph either in person, by agent, or through a receiver.
- d. **Appoint Receiver.** Lender shall have the right to have a receiver appointed to take possession of any or all of the Property, with the power to protect and preserve the Property, to operate the Property preceding foreclosure or sale, and to collect the Income from the Property and apply the proceeds, over and above cost of the receivership, against the Indebtedness. The receiver may serve without bond if permitted by law. Lender's right to the appointment of a receiver shall exist whether or not the apparent value of the Property exceeds the Indebtedness by a substantial amount. Employment by Lender shall not disqualify a person from serving as a receiver.
- e. **Tenancy at Sufferance.** If Grantor remains in possession of the Property after the Property is sold as provided above or Lender otherwise becomes entitled to possession of the Property upon default of Grantor, Grantor shall become a tenant at sufferance of Lender or the purchaser of the Property and shall, at Lender's options, either (a) pay a reasonable rental for use of the Property, or (b) vacate the Property immediately upon the demand of Lender.
- f. **Other Remedies.** Trustee or Lender shall have any other right or remedy provided in this Trust Deed or the Agreement or by law.
- g. **Notice of Sale.** Lender shall give Grantor reasonable notice of the time and place of any public sale of the Personal Property or of the time after which any private sale or other intended disposition of the Personal Property is to be made. Reasonable notice shall mean notice given at least ten (10) days before the time of the sale or disposition. Any sale of Personal Property may be made in conjunction with any sale of the Real Property.
- h. **Sale of the Property.** To the extent permitted by applicable law, Grantor hereby waives any and all rights to have the Property marshalled. In exercising its rights and remedies, the Trustee or Lender shall be free to sell all or any part of the Property together or separately, in one sale or by separate sales. Lender shall be entitled to bid at any public sale on all or any portion of the Property.



**20. WAIVER; ELECTION OF REMEDIES.**

A waiver by any party of a breach of a provision of this Trust Deed shall not constitute a waiver of or prejudice the party's rights otherwise to demand strict compliance with that provision or any other provision. Election by Lender to pursue any remedy provided in this Trust Deed, the Agreement, in any Related Document, or provided by law shall not exclude pursuit of any other remedy, and an election to make expenditures or to take action to perform an obligation of Grantor under this Trust Deed after failure of Grantor to perform shall not affect Lender's right to declare a default and to exercise any of its remedies.

**21. ATTORNEY FEES; EXPENSES.**

If Lender institutes any suit or action to enforce any of its rights under the Trust Deed or the Agreement, Lender shall be entitled to recover such sum as the court may adjudge reasonable as attorney fees at trial and on any appeal. Whether or not any court action is involved, all reasonable expenses incurred by Lender which in Lender's option are necessary at any time for the protection of its interest or the enforcement of its rights shall become a part of the Indebtedness payable on demand and shall bear interest at the Note rate or default rate, whichever is higher, from the date of expenditure until repaid. Expenses covered by this paragraph include, without limitation however subject to any limits under applicable law, Lender's attorney fees whether or not there is a lawsuit, including attorney fees for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), appeals and any anticipated post-judgment collection services, the cost of searching records, obtaining title reports (including foreclosure reports), surveyors' reports, appraisal fees, title insurance, and fees for the Trustee, to the extent permitted by applicable law. Grantor also will pay any court costs, in addition to all other sums provided by law. In the event of foreclosure of this Trust Deed, Lender shall be entitled to recover from Grantor Lender's attorney fees and actual disbursements necessarily incurred by Lender in pursuing such foreclosure.

**22. RIGHTS OF TRUSTEE.**

Trustee shall have all of the rights and duties of Lender as set forth in this section.

**23. POWER AND OBLIGATIONS OF TRUSTEE.**

The following provisions relating to the powers and obligations of Trustee are part of this Trust Deed.

- a. **Power of Trustee.** In addition to all powers of Trustee arising as a matter of law, Trustee shall have the power to take the following actions with respect to the Property upon the request of Lender and Grantor: (a) join in preparing and filing a map or plat of the Real Property, including the dedication of streets or other rights to the public; (b) join in granting any easement or creating any restriction on the Real Property; and (c) join in any subordination or other agreement affecting this Trust Deed or the interest of Lender under this Trust Deed.
- b. **Obligations to Notify.** Trustee shall not be obligated to notify any other party of a pending sale under any other trust deed or lien, or of any action or proceeding in which Grantor, Lender, or Trustee shall be a party, unless the action or proceeding is brought by Trustee.
- c. **Trustee.** Trustee shall meet all qualifications required for Trustee under applicable state law. In addition to the rights and remedies set forth above, with respect to all or any part of the Property, the Trustee shall have the right to foreclose by notice and sale, and Lender shall have the right to foreclose by judicial foreclosure, in either case in accordance with and to the full extent provided by applicable law.
- d. **Successor Trustee.** Lender, at Lender's option, may from time to time appoint a successor trustee to any trustee appointed hereunder by an instrument executed and acknowledged by Lender and recorded in the office of the Recorder of the County where the property is now located. The instrument shall contain, in addition to all other matters required by state law, the names of the original Lender, Trustee, and Grantor, the book and page where this Trust Deed is recorded, and the name and address of the successor trustee, and the instrument shall be executed and acknowledged by Lender or its successors in interest. The successor trustee, without conveyance of the Property, shall succeed to all the title, powers, and duties conferred upon the Trustee in this Trust Deed and by applicable law. This procedure for substitution of Trustee shall govern to the exclusion of all other provisions for substitution.
- e. **Sale by Trustee.** When the Trustee sells pursuant to the powers provided, Trustee shall apply the proceeds for sale to payment of (1) the expenses of sale, including the lawful fees of the Trustee and the reasonable fees of Trustee's attorney, (2) the obligations secured by this Trust Deed, (3) to all persons having recorded liens subsequent to the interest of the Beneficiary and the Trust Deed as their interest may appear in order of their priority and (4) the surplus, if any, to the Grantor or to his successor in interest entitled to such surplus.

**24. NOTICES TO GRANTOR AND OTHER PARTIES.**

Any notice under this Trust Deed, including without limitation any notice of default and any notice of sale to Grantor, shall be in writing and shall be effective when actually delivered or, if mailed, shall be deemed effective when deposited in the United States mail first class or registered mail, postage prepaid, directed to the addresses shown at the top of page one (1). Any party may change its address for notices under this Trust Deed by giving formal written notice to the other parties, specifying that the purpose of the notice is to change the party's address. All copies of notices of foreclosure from the holder of any lien which has priority over this Trust Deed shall be sent to Lender's address, as shown near the top of the first page of this Trust Deed. For notice purposes, Grantor agrees to keep Lender and Trustee informed at all times of Grantor's current address.

**25. MISCELLANEOUS PROVISIONS.**

The following miscellaneous provisions are a part of this Trust Deed.

- a. **Amendments.** This Trust Deed, together with any Related Documents, constitutes the entire understanding and agreement of the parties as to the matters set forth in this Trust Deed. No alteration or amendment of this Trust Deed shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.
- b. **Annual Reports.** Grantor shall furnish to Lender, upon request, a statement of net cash profit received from the Property during Grantor's previous fiscal year in such detail as Lender shall require. "Net cash profit" shall mean all cash receipts from the Property less all cash expenditures made in connection with the operation of the Property.



- c. **Applicable Law.** This Trust Deed has been delivered to Lender and accepted by Lender in the State of Oregon. This Trust Deed shall be governed by and construed in accordance with the laws of the State of Oregon.
- d. **Caption Headings.** Caption headings in the Trust Deed are for convenience purposes only and are not to be used to interpret or define the provisions of this Trust Deed.
- e. **Entire Agreement.** The parties agree that the Agreement and Trust Deed are the entire agreement between the parties and supersede any prior agreements between Borrower and Lender relating to the Property.
- f. **Merger.** There shall be no merger of the interest or estate created by this Trust Deed with any other interest or estate in the Property at any time held by or for the benefit of Lender in any capacity, without written consent of Lender.
- g. **Multiple Parties.** All obligations of Grantor under this Trust Deed shall be joint and several, and all references to Grantor shall mean each and every Grantor. This means that each of the persons signing below is responsible for all obligations in this Trust Deed. It is not necessary for Lender to inquire into the powers of any of the parties or of the officers, directors partners, or agents acting or purporting to act on behalf of Grantor, and any indebtedness made or created in reliance upon the professed exercise of such powers shall be guaranteed under and secured by this Trust Deed.
- h. **Severability.** If a court of competent jurisdiction finds any provision of this Trust Deed to be invalid or unenforceable as to any person or circumstance, such finding shall not render that provision invalid or unenforceable as to any other persons or circumstances, and all provisions of the Trust Deed in all other respects shall remain valid and enforceable.
- i. **Successors and Assigns.** Subject to the limitations stated in this Trust Deed on transfer of Grantor's interest, this Trust Deed shall be binding upon and inure to the benefit of the parties, their successors, and assigns. If ownership of the Property becomes vested in a person other than Grantor, Lender, without notice to Grantor, may deal with Grantor's successors with reference to this Trust Deed and the Indebtedness by way of forbearance or extension without releasing Grantor from the obligations of this Trust Deed or liability under the Indebtedness.
- j. **Time is of the Essence.** Time is of the essence in the performance of this Trust Deed.
- k. **Waiver of Homestead Exemption.** Grantor hereby releases and waives all rights and benefits of the homestead exemption laws of the State of Oregon as to all Indebtedness secured by this Trust Deed.

**EACH GRANTOR ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS TRUST DEED, AND EACH GRANTOR AGREES TO ITS TERMS.**

**GRANTOR**

By: Duane Potter

By: \_\_\_\_\_

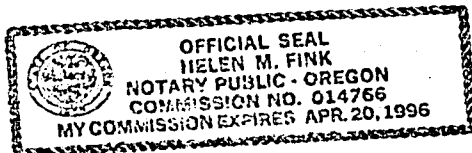
#### INDIVIDUAL ACKNOWLEDGMENT

STATE OF OREGON )  
 )ss.  
County of Klamath )

On the 21st day of April, 19 94, before me the undersigned Notary personally appeared Duane Potter, known to me to be said individual that executed the Trust Deed and acknowledged the Trust Deed to be the free and voluntary act of his/her will, by authority of statute, for the uses and purposes therein mentioned, and on oath stated that he/she was authorized to execute this Trust Deed and in fact executed the Trust Deed.

By: \_\_\_\_\_

Residing at: Klamath Falls, OR



Helen M. Fink  
Notary Public in and for the State of Oregon

My commission expires: 4/20/96

STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of Mountain Title co the 26th day of April A.D., 19 94 at 3:28 o'clock P.M., and duly recorded in Vol. M94 of Mortgages on Page 12543.

FEE \$45.00

Evelyn Biehn County Clerk  
By Douglas M. Henderson